

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

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MDL Docket No. 1332
Hon. J. Frederick Motz

This Document Relates To:
All Actions.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of November 19, 2001, on behalf of the Nationwide Settlement Class (as defined below), by and through its counsel, and Microsoft Corporation, by and through its counsel, in In re Microsoft Corp. Antitrust Litigation, MDL No. 1332, pending before Chief Judge J. Frederick Motz in the United States District Court for the District of Maryland.

WHEREAS, plaintiffs in various cases in state and federal courts around the United States have made certain antitrust and other claims against Microsoft based upon alleged violations of certain state and federal law, and such plaintiffs contend that they and the members of certain putative and/or certified classes have suffered damages and other injuries as a result;

WHEREAS, Microsoft denies each and every one of plaintiffs' allegations of unlawful conduct, damages and other injuries;

WHEREAS, after arm's-length negotiations between the authorized representatives of Counsel for the Nationwide Settlement Class (as defined below) and Microsoft, this Settlement Agreement has been reached;

WHEREAS, Counsel for the Nationwide Settlement Class have concluded, after substantial discovery and investigation of the facts, and after carefully considering the circumstances, that it would be in the best interests of the Nationwide Settlement Class to enter into this Settlement Agreement; and Counsel for the Nationwide Settlement Class consider the settlement set forth herein to be fair, reasonable, adequate and in the best interests of the Nationwide Settlement Class;

WHEREAS, Stanley M. Chesley, Michael D. Hausfeld, Robert L. Lieff and Ben Barnow have been appointed by Counsel for the Nationwide Settlement Class to act on behalf of Counsel for the Nationwide Settlement Class in connection with a possible settlement with Microsoft, and they represent and warrant that they are fully authorized to enter into an agreement on behalf of Counsel for the Nationwide Settlement Class; and,

WHEREAS, Microsoft has concluded that it will enter into this Settlement Agreement in order to, among other things, avoid the further expense, inconvenience, burden, uncertainty and risk of these litigations;

NOW, THEREFORE, it is agreed by the undersigned, on behalf of the Nationwide Settlement Class and Microsoft, that All Claims (as defined below) of the Nationwide Settlement Class against Microsoft be settled and compromised, and that All Cases (as defined below) against Microsoft be dismissed with prejudice, without costs to any party (except as provided herein), on the following terms and conditions:

I. Definitions

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth below.

1. “All Cases” means the cases listed on Appendix A hereto.
2. “All Claims” means all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Nationwide Settlement Class ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission alleged in any of the cases listed on Appendix A hereto, arising from the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application and which arise under or relate to any federal, state or common law, including but not limited to law concerning or relating to (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*), (b) unfair competition, (c) unfair practices, (d) consumer protection, (e) price discrimination, (f) unconscionable or unfair pricing, (g) trade regulation, (h) trade practices, (i) the Uniform Commercial Code, or (j) other law, regulation or common law similar or analogous to any of the above. “All Claims” does not include claims relating to conduct, acts or omissions that take place after the date of execution of this Settlement Agreement.
3. “Confirmatory Discovery” means discovery of third parties relating solely to this settlement and necessary to demonstrate the appropriateness, adequacy and/or practicability of the program(s) to be established pursuant to Section IV of this Settlement Agreement. It shall not include, among other things, discovery on the merits with respect to All Claims.

4. “Counsel for the Nationwide Settlement Class” means Plaintiffs’ Lead Counsel Committee in the MDL Proceeding and Plaintiffs’ Executive Committee in the MDL Proceeding, as identified in paragraphs 12 and 14 of Pretrial Order No. 1 in the MDL Proceeding, dated June 26, 2000.

5. “Court” means the United States District Court for the District of Maryland.

6. “Date of Final Approval” means the date upon which all of the events listed in Paragraph I.9 herein have occurred.

7. “Eligible Computers” means (a) all personal computers or Macintosh computers (including but not limited to laptop computers) owned or acquired by an Eligible School (as defined below) during the Settlement Period, and used on school premises for instructional purposes, and (b) all laptop computers owned by students or their parents and acquired using in whole or in part funds from grants from the foundation established pursuant to Section IV herein (“Foundation”).

8. “Eligible Schools” means all public elementary, middle, junior high and high schools (K-12) in the United States and its territories at which at least 70% of the attending students are eligible to receive free or reduced-priced meals through the National School Lunch Program (see National School Lunch Act, 42 U.S.C. §§ 1751-1769).

9. “Final Approval” means the occurrence of all of the following events:

- a. This settlement is approved in all respects by the Court;
- b. The Court enters an Order of District Court Approval as provided in Paragraph II.7 herein;

c. The Court enters a final judgment as provided in Paragraph II.7 herein;

d. The time to appeal or seek permission to appeal from the Court's Order of District Court Approval and/or final judgment has expired, or, if appealed, the Order of District Court Approval and final judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review;

e. For each state in the United States in which 5% or more of the members of the Nationwide Settlement Class are reasonably known to reside, the cases there pending (from those listed on Appendix A hereto) have been dismissed with prejudice and such dismissal has become final and non-appealable; and,

f. The time for Microsoft to withdraw from this Settlement Agreement (pursuant to the provisions of Paragraph II.6 herein) has expired.

10. "MDL Proceeding" means In re Microsoft Corp. Antitrust Litig., MDL Docket No. 1332 (D. Md.) (Motz, C.J.).

11. "Microsoft" means Microsoft Corporation, its successors, assigns and subsidiaries.

12. "Microsoft Applications" means all titles of software listed on Appendix B hereto.

13. "Microsoft Operating Systems" means all titles of software listed on Appendix C hereto.

14. "Nationwide Settlement Class" means all persons and entities of any kind who or which purchased and/or acquired a license in or for use in the United States (including its

territories, possessions and commonwealths), other than for re-sale or re-licensing, for one or more Microsoft Operating Systems and/or Microsoft Applications, during the period January 1, 1985 through the date hereof, but excluding Microsoft, its officers, directors, successors, assigns and subsidiaries, and governmental entities.

15. “Opt-Out Date” means the postmark date by which members of the Nationwide Settlement Class must mail their request to be excluded from the Nationwide Settlement Class in order for that request to be effective.

16. “Plaintiffs’ Co-Chairs” means the two Co-Chairs of the Plaintiffs’ Lead Counsel Committee as set forth in paragraph 12 of Pretrial Order No. 1 in the MDL Proceeding, namely, Stanley M. Chesley and Michael D. Hausfeld.

17. The “Settlement Notice Administrator” means a competent firm experienced in the administration of large-scale class action notices to be selected by Microsoft and Plaintiffs’ Co-Chairs, approved by the Court, and designated to receive notices from class members under Paragraph II.5b herein.

18. The “Settlement Period” means five years from a beginning date to be agreed upon by Microsoft and Plaintiffs’ Co-Chairs, which date shall be no less than ninety days, and no greater than 240 days, after the Date of Final Approval.

19. The “United States” means the fifty States, the District of Columbia, Guam and all territories, possessions, and commonwealths of the United States of America.

II. Court Approval, Class Notice and Opt-Out Procedures

1. Best Efforts. Counsel for the Nationwide Settlement Class and Microsoft agree to recommend approval of this Settlement Agreement to the Court. Counsel for the

Nationwide Settlement Class and Microsoft also agree to use their best efforts to obtain approval of this Settlement Agreement and to carry out the terms thereof. Counsel for the Nationwide Settlement Class and Microsoft shall support the settlement contemplated by this Settlement Agreement in all statements in any forum.

2. Motion for Preliminary Approval. Pursuant to the Court's instruction, Counsel for the Nationwide Settlement Class shall submit to the Court on or before November 21, 2001, a motion for conditional certification of the Nationwide Settlement Class and for preliminary approval of this Settlement Agreement on behalf of the Nationwide Settlement Class, together with a proposed preliminary approval order in the form appended hereto as Appendix D. The motion for preliminary approval shall seek approval of the form and manner of notice and opt-out procedures as set forth in Paragraphs II.4 and II.5 herein. The motion for preliminary approval shall also ask the Court to schedule a hearing date for final approval of this Settlement Agreement. Counsel for the Nationwide Settlement Class and Microsoft stipulate that the Nationwide Settlement Class shall be certified only for purposes of the settlement contemplated by this Settlement Agreement, and if such settlement is terminated or does not obtain Final Approval, then such certification shall be rendered null and void and the status of class certification in the MDL Proceeding shall be as it existed as of the date of execution of this Settlement Agreement.

3. Stay of Discovery and Other Proceedings. Effective as of the conclusion of the hearing on preliminary approval of the settlement: (a) all discovery in the MDL Proceeding shall be stayed and suspended until further order of the Court, with the exception of Confirmatory Discovery; (b) Counsel for the Nationwide Settlement Class shall cease pursuing

all discovery of any kind in All Cases, except Confirmatory Discovery in the MDL Proceeding; (c) to the extent Microsoft requests, Counsel for the Nationwide Settlement Class shall join and support any and all applications for a stay of all discovery, and/or injunction against all discovery, protective orders suspending discovery, and/or a stay of, and/or injunction against, all other proceedings of any kind in any case, regardless of whether in trial or appellate court, listed on Appendix A hereto in which Microsoft makes such application; and (d) to the extent Counsel for the Nationwide Settlement Class requests, Microsoft shall join and support any and all applications for a stay of all discovery, and/or injunction against all discovery, protective orders suspending discovery, and/or a stay of, and/or injunction against, all other proceedings of any kind in any case, regardless of whether in trial or appellate court, listed on Appendix A hereto in which Counsel for the Nationwide Settlement Class makes such application. If the settlement contemplated by this Settlement Agreement is terminated or does not obtain Final Approval, then all discovery materials or information obtained in connection with Confirmatory Discovery shall be rendered null and void, shall be deemed not taken, and shall not be used in All Cases.

4. Notice

a. In the motion for conditional certification of the Nationwide Settlement Class and for preliminary approval of this Settlement Agreement (as set forth in Paragraph II.2 herein), Counsel for the Nationwide Settlement Class shall apply to the Court for an order authorizing summary notice by publication to the Nationwide Settlement Class substantially in the form to be agreed upon by Counsel for the Nationwide Settlement Class and Microsoft, and as approved by the Court. Such notice shall inform the class members of the certification of the Nationwide Settlement Class, advise them of their rights to request exclusion

from the Nationwide Settlement Class, and state the date scheduled by the Court for the hearing on final approval (as set forth in Paragraph II.2 herein).

b. Counsel for the Nationwide Settlement Class and Microsoft agree that, under the circumstances, the best practicable means of notice to the Nationwide Settlement Class is notice by publication. Subject to approval of the Court, Counsel for the Nationwide Settlement Class and Microsoft agree that notice shall be published in the national editions of the following national consumer and business publications, and that Microsoft will bear the cost of such notice:

- Business Week magazine
- National Geographic magazine
- New York Times (2 times, one of which is Sunday)
- Newsweek magazine (2 times)
- Parade weekend supplement (2 times)
- PC Magazine (2 times)
- PC World magazine (2 times)
- People magazine (2 times)
- Reader's Digest (2 times)
- Time magazine (2 times)
- T.V. Guide (2 times)
- US News & World Report (2 times)
- USA Today (2 times, at least one week apart)
- USA Today weekend supplement (2 times)
- Wall Street Journal (2 times, at least one week apart)
- The primary daily newspapers for United States territories and possessions

c. In addition to notice by publication, Microsoft will arrange for written notice substantially in the form adopted pursuant to Paragraph II.4a herein to be mailed (a) to all members of the Nationwide Settlement Class whose names and addresses are reflected on databases maintained by Microsoft reflecting the registration of licenses for Microsoft Operating Systems and/or Microsoft Applications, and (b) to all named plaintiffs in All Cases, at their last known address. Microsoft will bear the cost of such notice. All such names and

addresses shall be kept strictly confidential and shall not be disclosed to any person or used for any purpose other than for the issuance of notice in connection with this Settlement Agreement.

d. Microsoft will also cause the Court-approved notice of the settlement to be posted, during the entire Notice Period (as defined in Paragraph II.4e herein), on an existing or new Internet Web site, as Counsel for the Nationwide Settlement Class and Microsoft shall agree. Microsoft will endeavor to ensure that the Web site is locatable using standard Internet search techniques (such as search engines) and that the identifying URL for the Web site is reasonably related to the subject of the settlement.

e. Notice Period. The mailed notice of Paragraph II.4c herein shall be provided during a period (“Notice Period”) which shall begin on a date within sixty days after the Court enters an order preliminarily approving this settlement (“Notice Commencement Date”), and which shall end on a date ninety days after the Notice Commencement Date (“Notice Ending Date”). Counsel for the Nationwide Settlement Class and Microsoft shall use all reasonable efforts to ensure that the publication notice under Paragraph II.4b herein is completed during the same Notice Period; however, if the advertising schedule of a national publication results in a non-substantial deviation from the Notice Period for such publication, the publication notice shall not thereby be deemed inadequate and Counsel for the Nationwide Settlement Class and Microsoft agree to seek a ruling from the Court to that effect.

f. Microsoft will bear the costs of notice as provided under this Paragraph II.4 herein whether or not this Settlement Agreement obtains Final Approval or is otherwise terminated.

5. Opt-Out Procedures.

a. Eligibility. Counsel for the Nationwide Settlement Class and Microsoft will recommend that the Court approve an Opt-Out Date that is 150 days after entry of the Court's order for preliminary approval. Any member of the Nationwide Settlement Class may request exclusion from ("opt out" of) the settlement on or before the Opt-Out Date through the method described below. Except as otherwise authorized by law, no person may opt out on behalf of any other person, persons, classes or sub-classes.

b. Method of Exercise. Each member of the Nationwide Settlement Class wishing to opt out of the Nationwide Settlement Class must individually sign and submit timely written notice to the designated P.O. Box obtained by the Settlement Notice Administrator. This written notice must clearly manifest an intent to be excluded from the Nationwide Settlement Class. To be effective, written notice must be postmarked on or before the Opt-Out Date.

6. Termination. In addition to whatever other termination rights are set forth in this Settlement Agreement, Microsoft has a right to terminate this Settlement Agreement as per the terms reflected in Appendix E, appended hereto, and filed under seal.

7. Motion for District Court Approval and Entry of Final Judgment. Within sixty days of the Opt-Out Date, Counsel for the Nationwide Settlement Class and Microsoft shall seek entry by the Court of an Order of District Court Approval and final judgment, substantially in the form appended hereto as Appendix F:

a. Determining that Microsoft and the Nationwide Settlement Class have submitted to the jurisdiction of the Court for purposes of the proposed settlement, that the

Court has personal jurisdiction over the settling parties and all members of the Nationwide Settlement Class and that the Court has subject matter jurisdiction to approve this Settlement Agreement as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure;

b. Finding that the proposed Nationwide Settlement Class satisfies the requirements of a class action under applicable law and is certified for settlement purposes only;

c. Finding that the notice methodology implemented pursuant to Paragraph II.4 herein of this Settlement Agreement (a) constitutes reasonable and the best practicable notice; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise members of the Nationwide Settlement Class of the pendency of this action, the terms of the proposed settlement, the right to object to or exclude themselves from the proposed settlement, and to appear at the settlement hearing; (c) constitutes due, adequate and sufficient notice to all persons or entities entitled to receive such; and (d) meets the requirements of due process, the Federal Rules of Civil Procedure and any other applicable rules of the Court;

d. Directing that All Cases pending before the Court (as listed on pages A-1 through A-5 of Appendix A hereto) be dismissed with prejudice and, except as provided for herein, without costs;

e. Reserving for the Court exclusive jurisdiction over this settlement, including the administration, consummation and enforcement of this settlement;

f. Determining that there is no just reason for delay and directing that the final judgment shall be final and appealable;

g. Directing that, for a period of five years, the Clerk of the Court shall maintain the record of those members of the Nationwide Settlement Class who have timely excluded themselves from the Nationwide Settlement Class and that a certified copy of such records shall be provided to Microsoft at Microsoft's expense; and,

h. Incorporating the release set forth in Section III herein and forever discharging Microsoft from All Claims.

8. Effect of Disapproval. If the Court for any reason (a) determines not to approve this Settlement Agreement; (b) does not enter the final judgment substantially as provided for in Paragraph II.7 and Appendix E; (c) enters the final judgment and appellate review is sought, and on such review, such final judgment is not fully affirmed; or (d) if the Court's approval is modified, reversed or set aside on appeal, then this Settlement Agreement terminates and becomes null and void except as otherwise provided herein.

9. Dismissal With Prejudice. Upon Final Approval, Counsel for the Nationwide Settlement Class and Microsoft shall join in seeking dismissal with prejudice of All Cases.

III. Release

1. Upon Final Approval, each member of the Nationwide Settlement Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Nationwide Settlement Class ever had, could have had, now

has or hereafter can, shall or may have, relating in any way to any conduct, act or omission alleged in any of the cases listed on Appendix A hereto, arising from the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application and which arise under or relate to any federal, state or common law, including but not limited to law concerning or relating to (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*), (b) unfair competition, (c) unfair practices, (d) consumer protection, (e) price discrimination, (f) unconscionable or unfair pricing, (g) trade regulation, (h) trade practices, (i) the Uniform Commercial Code, or (j) other law, regulation or common law similar or analogous to any of the above. This Release does not include claims relating to conduct, acts or omissions that take place after the date of execution of this Settlement Agreement.

2. In addition to the provisions of Paragraph III.1 herein, each member of the Nationwide Settlement Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases, upon Final Approval, any and all defenses, rights and benefits that it may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraph III.1 herein. Without limiting the generality of the foregoing, each of the members of the Nationwide Settlement Class acknowledges that this release is not a “general release” as such term is used in Section 1542 of the Civil Code of the State of California; and each member of the Nationwide Settlement Class expressly and irrevocably waives any and all defenses, rights and benefits that it might otherwise have in relation to the release under or by virtue of the provisions of said Section, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each member of the Nationwide Settlement Class also expressly and irrevocably waives and fully, finally and forever settles and releases, upon Final Approval, any and all defenses, rights, and benefits that it may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

IV. Educational Programs

1. Statement of Principles. Counsel for the Nationwide Settlement Class and Microsoft agree that the goals of this Section IV of the Settlement Agreement are to advance and promote the meaningful use of technology in the curricula of Eligible Schools and to provide access to such technology to teachers and students and thereby to benefit society and the Nationwide Settlement Class. Counsel for the Nationwide Settlement Class and Microsoft commit to work together to ensure that these stated goals are met as provided in this Settlement Agreement.

2. Foundation. Microsoft will establish a national Foundation (“Foundation”), with the powers and duties set forth below and which is intended to continue in existence beyond the end of the Settlement Period.

a. The Board. The Foundation will have a board of directors of five members (“Board”). For the initial terms of the five board members: (a) Plaintiffs’ Co-Chairs will appoint one member for a two-year term and one member for a three-year term; (b) Microsoft will appoint one member for a two-year term and one member for a three-year term; and (c) the initial four members unanimously will appoint a fifth member for a three-year term or, if no unanimous agreement can be reached, the fifth member will be appointed by the Court

from lists of candidates submitted by Plaintiffs' Co-Chairs and Microsoft. During the Settlement Period, at the end of their term or in the event of a vacancy, each board member's position will be filled through the original method of their appointment, with all subsequent terms to be for a period of two years. The Foundation shall adopt by-laws for its operation and administration consistent with this Settlement Agreement. Such by-laws shall include procedures for nomination and selection of board members after the end of the Settlement Period, and shall provide for the continued operation of the Foundation for the betterment of public K-12 education after the end of the Settlement Period. Board members may be individuals, foundations, not-for-profit organizations or philanthropic organizations which generally share the goals of the Foundation set forth herein.

b. Powers and Duties of the Board. The Foundation will expend funds directly, and grant funds to qualified local foundations or charitable organizations, in the amounts and for the purposes necessary to effectuate the goals of this Settlement Agreement. The Foundation will grant and expend such funds on a non-discriminatory basis in response to the hardware and software choices of the Eligible Schools. If no qualified local foundation or charitable organization is available for an Eligible School, the Foundation may grant funds directly to that school in accordance with the purposes set forth in Paragraph IV.2. The Foundation will create and disseminate documents and other materials to encourage and enable the establishment of eligible programs in local foundations and charitable organizations. The Foundation will publicize and implement the software and hardware programs under this Section IV so as to maximize the Eligible Schools' ability to obtain and use the software and hardware obtained under the terms of this Settlement Agreement. At a minimum, each Eligible School, or the school district in which the Eligible School is situated, shall receive notice summarizing the

benefits available under this Settlement Agreement. The Foundation may coordinate with other charitable foundations or philanthropic organizations in order to share administrative or operational resources as it deems appropriate in order to minimize operating expenses. At the end of each year of the Settlement Period, the Board will provide the Court with an annual report describing the activities of the Foundation in the prior year, including a report of grants awarded, a description of fundraising activities and a statement of expenses. The Board shall, on an annual basis, in consultation with the Education Council, determine the minimum specifications for the computers to be made available during the following year under Paragraph IV.5 herein, pursuant to the procedures set forth in that Paragraph.

c. The Staff. The Foundation shall be authorized to employ or retain such staff and consultants as needed to fulfill its goals, duties and responsibilities (“Staff”). The Foundation may retain consultants to assist Eligible Schools in preparing technology deployment plans, drafting grant requests and otherwise obtaining benefits available pursuant to this Settlement Agreement. During the Settlement Period, through its Staff or otherwise, the Foundation shall collect and disseminate information from Microsoft Authorized Refurbishers (as defined below), and consult with Eligible Schools, regarding the availability of refurbished machines needed to meet school plans and requirements, and shall assist Eligible Schools in submitting orders for machines so as to maximize the homogeneity of models and manufacturers of computers in each school or district.

d. Education Council. The Board shall select an Education Council (“Council”), consisting of no fewer than three, and no more than five, members. The Council shall consist of persons with experience in K-12 education, information technology management or administration, and/or charitable grant-making or grant-writing. The Council shall assist the

Board in promoting the equitable and effective distribution of benefits to Eligible Schools under this Settlement Agreement, and in making it as easy as possible for Eligible Schools to understand and obtain the benefits available under this Settlement Agreement so that the programs provided herein are user-friendly for the Eligible Schools. The duties of the Council, or its members, as established by the Board, shall include, but are not necessarily limited to (a) the promotion of this Settlement Agreement among Eligible Schools; (b) recommendation to the Board of guidelines for allocation among Eligible Schools of donated units of software that are subject to caps under Paragraph IV.6 herein; (c) the receipt and attempted resolution of concerns or complaints by Eligible Schools regarding implementation of the terms of this Settlement Agreement; (d) consultation with Microsoft regarding the preparation of training materials, curriculum materials, and training on curriculum integration; (e) review of fees charged by Microsoft Authorized Refurbishers for machines purchased by Eligible Schools, and consultation with Microsoft regarding the participation by any refurbisher in the Microsoft Authorized Refurbisher program; and (f) fundraising for the Foundation. The Council shall, on an annual basis, consult with the Board concerning the determination of minimum specifications for the computers to be made available during the following year under Paragraph IV.5 herein, pursuant to the procedures set forth in that Paragraph.

e. Funding of the Foundation. Microsoft will contribute funds to the Foundation in the following amounts and for the purposes stated herein:

(i) Technology Acquisition: Microsoft will pay \$150 million, plus (contingent upon the payment of other contributions, as described below) an additional \$100 million to match, on a \$1-to-\$2 basis (i.e., on the basis of \$1 from Microsoft for every \$2 received from other sources), funds donated to the

Foundation from other sources. These funds shall be used to award grants for technology acquisition as provided in Paragraph IV.2f herein. Funds to be paid by Microsoft to the Foundation under this Paragraph IV.2e(i) shall be paid as follows:

(A) Within thirty days of the grant of preliminary approval of this Settlement Agreement, Microsoft will place \$50 million in escrow. Interest on this account shall be payable to Microsoft.

(B) Within thirty days of the Date of Final Approval, Microsoft shall pay into an account for the benefit of the Foundation \$150 million plus interest compounded annually thereon, calculated from the date of the preliminary approval at the 10-year Treasury Bill rate existing on the date of the preliminary approval. On the date Microsoft makes this payment of \$150 million plus interest, the \$50 million placed in escrow under Paragraph IV.2e(i)(A) herein shall be returned to Microsoft.

(C) The Foundation will provide Microsoft with quarterly written reports of funds received from donations from other sources. Microsoft will match such donations made during the Settlement Period up to a total of \$100 million on a \$1-to-\$2 basis (i.e., on the basis of \$1 from Microsoft for every \$2 received from other sources), and will pay such matching funds quarterly within thirty days of receiving the Foundation's report.

(ii) Support: Microsoft will also pay a total of \$160 million, at such times and in such amounts as called for by the Foundation during the Settlement Period, and within thirty days of receipt of written notice from the Foundation, to be

expended for technology support programs for Eligible Schools as provided for in this Paragraph. The Foundation will expend such funds during the Settlement Period for the establishment of IT Academy Clinical Programs as described in Paragraph IV.2e(ii)(A) below, for the expansion of the Gen-SCI programs as described in Paragraph IV.2e(ii)(B) below, and/or for such other technical support programs as the Board may direct, with the amounts expended on such programs to be coordinated by the Board in consultation with the Education Council so as to minimize duplication and maximize the support benefit available to Eligible Schools.

(A) IT Academy Clinical Programs: The Foundation will fund the establishment of community college for-credit clinical education programs in computer, software and network support for Eligible Schools. The purposes of the clinical programs will be to provide timely, effective technical support to Eligible Schools, and to provide real-world technical support experience to students in the clinical programs. Such clinical education programs will be associated with existing IT Academies in fourteen regional community college programs around the country, and with such additional high schools, community colleges and four-year colleges (collectively, "IT Academy Schools") as will be selected by the Board in consultation with the Education Council and Microsoft during the Settlement Period based on support demands of Eligible Schools. Microsoft agrees to use reasonable efforts to assist the Foundation to establish these clinical programs by working with its partners in the IT Academy Schools. The clinical programs shall require that the clinical students be trained for and

provide services for software and computer platforms on a non-discriminatory basis as requested by Eligible Schools.

(B) Gen-SCI program: Gen-SCI is a well-established technical support program that trains and enables students to troubleshoot and care for a school's hardware, software and network infrastructure. It has been successfully established in urban and rural schools throughout the United States. The Foundation will grant funds to Gen-SCI and/or comparable organizations during the Settlement Period for the purpose of providing student-centered programs for technical support and related services in Eligible Schools.

f. Foundation Expenses and Grants. The Foundation shall be responsible for and may expend funds for its own reasonable general and administrative costs and expenses, including customary and reasonable honoraria for Board and Council members, compensation for employees and consultants, fund-raising costs, and such other costs as are reasonable and necessary to discharging the responsibilities of the Board and achieving the goals of the Foundation. The Foundation may grant funds, as requested by Eligible Schools or local foundations or charitable organizations acting on behalf of Eligible Schools, on a non-discriminatory basis as responsive as possible to the technology choices of the Eligible Schools for:

(i) one-third (1/3) of the cost of new hardware and other technology equipment;

(ii) one-third (1/3) of the cost of laptop computers owned by students or parents of students of Eligible Schools for use by those students for educational purposes at Eligible Schools;

(iii) one-half (1/2) of the cost of refurbished computers (or the actual cost less \$50, whichever is greater) acquired from a Microsoft Authorized Refurbisher;

(iv) licensing of software, including software from companies other than Microsoft, as may be selected by Eligible Schools; and/or,

(v) other technologies or curriculum integration training that may be requested by Eligible Schools, on such terms as the Board may establish consistent with the goals of the Foundation.

g. Early Implementation. If Plaintiffs' Co-Chairs and Microsoft so agree, a portion of the amounts described in Paragraph IV.2e(i) above may be used to pay the expenses of start-up and implementation of the Foundation and its programs before the Date of Final Approval.

3. Teacher Training. Microsoft, after consultation with the Education Council, will contract with established vendors who meet reasonable objective criteria for quality and experience, to provide training to teachers, administrators and support personnel in Eligible Schools regarding the integration of technology into the curriculum, the use of software and hardware received under the terms of this Settlement Agreement, and the maintenance and support of hardware and software received under the terms of this Settlement Agreement. Training programs will include regionally available in-person programs and on-line programs. Training on curriculum integration will be platform-neutral, and training on software use will include, but not necessarily be limited to, training on all software donated under Section Paragraph IV.6 herein. Microsoft may, after consultation with the Education Council, use funds provided under this paragraph to (a) develop training models and curriculum materials that

Eligible Schools can use to meaningfully integrate technology into their teaching of core subjects, and (b) compensate Eligible Schools or teachers for reasonable travel expenses, substitute teachers and/or teacher stipends to enable teachers to receive the training provided for in this Paragraph. Microsoft will pay \$18 million per year for each of the five years of the Settlement Period (a total of \$90 million) for the purposes set forth in this Paragraph. Microsoft shall bear its own administrative costs incurred in meeting its obligations under this Paragraph. Microsoft, in consultation with the Education Council, shall use reasonable efforts to maximize the impact and usefulness to Eligible Schools of the training provided pursuant to this Paragraph.

4. TechNet. Microsoft shall make available to all Eligible Schools upon request during the term of this Settlement Agreement a standard subscription to Microsoft's TechNet technical support program, or its successor programs. Such a subscription currently includes Microsoft Resource Kits, service packs, Knowledge Base articles, how-to content, drivers and patches, technical information, deployment guides and training materials, and technical training CDs.

5. Refurbished Computers. Microsoft will establish a Microsoft Authorized Refurbisher program. Under this program non-profit refurbishers who meet reasonable criteria established by Microsoft for business standards and practices will be encouraged to refurbish Macintosh computers and personal computers for use in this program. Microsoft will provide such refurbishers with licenses and/or software for Microsoft operating systems (Windows 98 SE or more recent as machine specifications permit) installed on refurbished personal computers. Microsoft will administer the program and bear the costs of administration. As part of this program Microsoft will guarantee that a total of at least 200,000 computers, consisting of

Macintosh computers or Pentium-class personal computers or better, will be available to Eligible Schools for each year of the Settlement Period at ordinary fees charged by such Refurbishers. Each such computer will include a color monitor, Ethernet card, speakers, keyboard and pointing device, necessary cables, 56K modem and CD ROM drive. Microsoft will make up any annual shortfall in the number of available machines by donating to Eligible Schools, on request, computers that meet the specifications as determined by the Board pursuant to this Paragraph. Microsoft and Counsel for the Nationwide Class recognize that computer technology advances rapidly. To ensure that Eligible Schools are given the benefit of the more advanced technology that may become available as the Settlement Period progresses, the Education Council shall meet annually (beginning prior to the commencement of the Settlement Period) to evaluate the appropriate minimum specifications for the refurbished computers for the upcoming year of the Settlement Period and to recommend those specifications to the Board for consideration. In recommending and setting such specifications, the Council and the Board respectively shall consider the technology needs and plans of Eligible Schools, and data provided by Microsoft, the Microsoft Authorized Refurbishers, Plaintiffs' Co-Chairs and others. After due consideration of such information, the Board will determine the specifications at a level intended to provide the best technology reasonably likely to be available from Microsoft Authorized Refurbishers in a volume of 200,000 or more units in the coming year of the Settlement Period. The specifications will not be reduced from year to year except in extraordinary circumstances and then only with Court approval. The minimum specifications adopted each year will include but not be limited to processor speed, RAM and storage capacity, and will not be below a level sufficient to run at reasonable performance levels, for school use, Windows 98 SE and the application programs to be donated pursuant to Paragraph IV.6 herein. Microsoft Authorized Refurbishers, as conditions

of participation in the Refurbisher program, will agree to provide Eligible Schools with the first option to purchase the computers that meet or exceed the specifications determined by the Board, and will agree to provide the Foundation with regular periodic reports regarding the anticipated supply of available computers so that the Foundation Staff may assist Eligible Schools in placing timely orders. All computers meeting or exceeding the specifications established each year and on which the first option is granted to Eligible Schools by Microsoft Authorized Refurbishers during the upcoming year of the Settlement Period will be deemed “available” for purposes of Microsoft’s guarantee under this Paragraph.

6. Microsoft Software. During the Settlement Period, Microsoft will deliver software to Eligible Schools pursuant to requests from such schools, as provided below:

a. For Eligible Schools covering any grades between K and 8 or any subset thereof (e.g., a school covering grades K-6 or 5-8), software for all Eligible Computers from the following list (and title predecessors and successors to each, as long as such are commercially available). Each such school can request any or all software from the following list for each Eligible Computer once, plus one upgrade, during the Settlement Period.

- (i) Office XP Standard, Office 2000 Standard or Mac Office
- (ii) Encarta Reference Library (CD)
- (iii) Windows XP Professional or Windows 2000 Professional
- (iv) Map Point 2002
- (v) All Magic School Bus titles
- (vi) All My Personal Tutor titles
- (vii) Creative Writer

For each such Eligible School,

one Windows 2000 Server and Client Access Licenses (“CALs”) for all Eligible Computers; and

one Encarta Class server and CALs for all Eligible Computers.

For each Eligible School that includes grades 7 and 8, such school can also request software for each Eligible Computer used by 7th and 8th grade students from each of the following categories:

- (i) Visio Pro 2002, Front Page 2002, Publisher 2002, Project 2000; and
- (ii) Visual Studio.net, Visual Basic, Visual C++.

For software delivered under the foregoing sentence only: the requirement to deliver such software shall be limited to 100,000 units of software in category (i) above, and 100,000 units in category (ii) above.

Allocation of available units among Eligible Schools shall be made under guidelines to be recommended by the Education Council and adopted by the Board. For this software, each Eligible School that receives software may also request an upgrade once during the Settlement Period, and the upgrade shall not count toward the 100,000 unit limits above.

b. For all other Eligible Schools (any school with at least one grade that is higher than K-8, as for example a school covering grades 7-9 or 8-12 or K-12), software for all Eligible Computers, from the following list (and title predecessors and successors to each, as long as such are commercially available) but subject to the stated total aggregate limits for all such Eligible Schools on units per category. Each such Eligible School can request software for each such Eligible Computers once, plus one upgrade during the Settlement Period, except that no upgrade shall be required to be made available for any of Office XP Standard, Office 2000 Standard or Mac Office.

<u>Software Titles</u>	<u>Aggregate Limit</u>
(i) Office XP Standard, Office 2000 Standard, or Mac Office	400,000 units
(ii) Encarta Reference Library (CD)	100,000 units
(iii) Windows XP Professional or Windows 2000 Professional	100,000 units
(iv) Map Point 2002, Publisher 2002, Visio Pro 2002, Project 2000, Front Page 2002	400,000 units
(v) Visual Studio.net, Visual Basic, Visual C++	200,000 units

For each such Eligible School,

one Windows 2000 Server and CALs for all Eligible Computers; and

one Encarta Class server and CALs for all Eligible Computers.

Microsoft will bear all costs of administration and fulfillment for the software donation under this Paragraph.

7. Non-Displacement of Other Charitable and Educational Activities.

Microsoft undertakes its obligations under Section IV of this Settlement Agreement in addition to its existing corporate charitable giving, and represents and intends that it will not decrease its corporate charitable giving because of its obligations under this Settlement Agreement.

V. Other Provisions

1. No Admission. By entering into this Settlement Agreement, Microsoft does not admit any liability or wrongdoing or the truth of any of the claims or allegations in any of the cases listed on Appendix A hereto. To the contrary, Microsoft specifically denies each and every one of the allegations of unlawful conduct and damages in All Cases. It is expressly understood and agreed that this Settlement Agreement is being entered into solely for the

purpose of amicably resolving all matters of any kind whatsoever between Microsoft and the Nationwide Settlement Class. Counsel for the Nationwide Settlement Class agree not to represent, publicly or otherwise, that the settlement in any way embodies, reflects, implies or can be used to infer any culpability by Microsoft or any of its directors, officers, employees, attorneys, insurers or agents.

2. Attorneys' fees. Microsoft agrees to pay reasonable attorneys' fees and costs in an amount to be determined by the Court. Microsoft and Counsel for the Nationwide Settlement Class represent that they have not had any discussions regarding attorneys' fees other than discussing this Paragraph and will commence discussions if and when the Court grants the preliminary approval contemplated by Paragraph II.2 herein.

3. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, each member of the Nationwide Settlement Class, Microsoft, and their respective successors, assigns and subsidiaries.

4. Choice of Law. This Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Maryland without regard to its choice of law or conflict of laws principles.

5. Discovery Materials.

a. All discovery materials and information (including but not limited to documents; responses to interrogatories, document requests, subpoenas or other oral or written requests; transcripts (including but not limited to deposition transcripts) of any kind and in any medium; privilege logs; and all data furnished or stored by electronic means (including but not

limited to CDs, computer files and tape storage units)) produced or provided by any of the parties or non-parties either before, on or after the date of this Settlement Agreement, whether produced or provided informally or pursuant to discovery requests, shall be governed by all Confidentiality/Protective Orders in force as of the date of this Settlement Agreement or as modified with the consent of Counsel for the Nationwide Settlement Class and Microsoft.

b. Counsel for the Nationwide Settlement Class and Microsoft acknowledge and agree that within thirty days of the Date of Final Approval, all such discovery materials and information produced by, provided by or discovered of Microsoft, or its current or former directors, officers, employees, attorneys, insurers or agents, shall be returned to Microsoft upon its request and at its expense, or destroyed in a manner acceptable to Microsoft. In addition, anything which incorporates, includes, references or quotes any discovery materials or information produced by, provided by, discovered of or obtained in discovery relating to Microsoft, or its current or former directors, officers, employees, attorneys, insurers or agents (including but not limited to materials or information produced by non-parties, expert work product and attorney work product) shall be returned to Microsoft upon its request and at its expense, or destroyed in a manner acceptable to Microsoft.

c. Counsel for the Nationwide Settlement Class shall also cause each and every person to whom they have provided such materials (including but not limited to third parties such as experts and consultants) to return the materials to Microsoft or destroy such materials in a manner acceptable to Microsoft.

d. Notwithstanding the above, Plaintiffs' Co-Chairs may retain, subject to all applicable confidentiality orders, one file copy each of any pleadings, motions, briefs or affidavits that have been filed with the Court.

6. Execution in Counterparts. The signatories to this Settlement Agreement may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all counsel had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

7. Integrated Agreement. This Settlement Agreement (with its appendices and expressly incorporated documents) contains the entire, complete and integrated statement of each and every term and provision agreed to by and among Counsel for the Nationwide Settlement Class and Microsoft, and is not subject to any condition not provided for herein. This Settlement Agreement shall not be modified in any respect except by a writing executed by the signatories hereto. In entering into this Settlement Agreement, neither Counsel for the Nationwide Settlement Class nor Microsoft has made or relied on any warranty or representation not specifically set forth herein.

8. Jurisdiction. The United States District Court for the District of Maryland shall have exclusive jurisdiction over all provisions of this Settlement Agreement and over any and all disputes of any kind relating in any way to, or arising in any way out of, this Settlement Agreement.

9. Power of the Court. Counsel for the Nationwide Settlement Class and Microsoft will jointly seek, will not oppose, and will affirmatively support, any motion or application to obtain relief under (a) the All-Writs Act, 28 U.S.C. § 1651, “to enjoin state proceedings that interfere, derogate or conflict with federal judgments, orders or settlements,”

and (b) the Anti-Injunction Act, 28 U.S.C. § 2283, to enjoin a state court proceeding “when it is necessary to protect the court’s jurisdiction,” to protect and accomplish this settlement.

10. Notice. Any notice, request, instruction or other document to be given by Microsoft to Counsel for the Nationwide Settlement Class, or vice versa, shall be in writing and (a) delivered personally, or (b) sent by Federal Express, facsimile and by Certified Mail, Return Receipt Requested.

If to Microsoft:

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1100 New York Avenue, NW
West Tower, Suite 500
Washington, DC 20005

IN WITNESS WHEREOF, Counsel for the Nationwide Settlement Class and Microsoft have duly executed this Settlement Agreement on this 19th day of November, 2001.

AGREED to this 19th day of November, 2001.

Counsel for Microsoft Corporation

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On behalf of Counsel for the Nationwide Settlement Class

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APPENDIX A

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
In re Microsoft Corp. Antitrust Litigation	MDL No. 1332	U.S.D.C., D. Md.
Aikens v. Microsoft	No. 00-2132	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Brandt v. Microsoft	No. 00-2146	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Brems v. Microsoft	No. 00-2445	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Campbell v. Microsoft	No. 00-1267	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Cheeseman v. Microsoft	No. 00-1269	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Colebank v. Microsoft	No. 00-1610	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Conrad v. Microsoft (consolidated w/Precision Billing)	No. 00-2138	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Cox v. Microsoft	No. 00-1242	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Davenport v. Microsoft	No. 00-1268	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Deiter v. Microsoft	No. 00-1250	U.S.D.C., D. Md. (consolidated under MDL No. 1332)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
DeJulius v. Microsoft	No. 00-1249	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
eLeaders, Inc. v. Microsoft	No. 00-1248	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Gianni v. Microsoft	No. 00-2147	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Glase v. Microsoft	No. 00-1605	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Gravity, Inc. v. Microsoft	No. 00-1247	U.S.D.C., D. Md. (coordinated under MDL No. 1332)
GTI System v. Microsoft	No. 00-2443	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Hagan v. Microsoft	Nos. 00-2143 & 00-2142	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Haynes v. Microsoft	No. 00-2149	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Howard v. Microsoft	No. 00-2446	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Jaffe v. Microsoft	No. 00-1603	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Klein v. Microsoft	No. 00-1602	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Kloth v. Microsoft	No. 00-2117	U.S.D.C., D. Md. (consolidated under MDL No. 1332)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Kloth v. Microsoft	No. 00-1265	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Kloth v. Microsoft	No. 00-1266	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Knight v. Microsoft	No. 00-2134	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Luce v. Microsoft	No. 00-1740	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Manson v. Microsoft	No. 00-2302	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
McCall v. Microsoft	No. 99-3897	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
McWhinney v. Microsoft	No. 00-1606	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Mims v. Microsoft	No. 00-1243	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Moon v. Microsoft	No. 00-1608	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Moscowitz v. Microsoft	No. 00-2444	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Nielsen v. Microsoft	No. 00-1262	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
O'Brien v. Microsoft	No. 00-1817	U.S.D.C., D. Md. (consolidated under MDL No. 1332)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
O'Neill v. Microsoft	No. 00-1272	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
O'Sullivan v. Microsoft (consolidated w/Precision Billing)	No. 00-2137	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Pacific Coast Systems v. Microsoft	No. 00-2142	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Penix v. Microsoft	No. 00-2148	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Phillips v. Microsoft	No. 00-1271	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Precision Billing v. Microsoft	No. 00-1256	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Prentice v. Microsoft	No. 00-2451	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Pryor v. Microsoft	No. 00-2141	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Pryor v. Microsoft	No. 00-1263	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Quigley v. Microsoft	No. 00-1258	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Ray v. Microsoft	No. 00-2441	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Rubbright Group v. Microsoft	No. 00-1261	U.S.D.C., D. Md. (consolidated under MDL No. 1332)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Shevekov v. Microsoft (consolidated w/Pacific Coast)	Nos. 00-2144 & 00-2142	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Shirazi v. Microsoft (consolidated w/Hagan)	Nos. 00-2145 & 00-2142	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Silverware, Ltd. v. Microsoft	No. 00-1682	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
South Dakota Assoc. Plumbing v. Microsoft	No. 00-1607	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Strickley v. Microsoft	No. 00-2447	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Supernovich v. Microsoft	No. 00-3471	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Tinkham v. Microsoft	No. 00-2450	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
To the Rescue v. Microsoft	No. 00-1252	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Turner Corporation v. Microsoft	No. 00-2139	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Tyler v. Microsoft	No. 00-1244	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Weinke v. Microsoft	No. 00-1273	U.S.D.C., D. Md. (consolidated under MDL No. 1332)
Wilson v. Microsoft	No. 00-1257	U.S.D.C., D. Md. (consolidated under MDL No. 1332)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
O'Brien v. Microsoft	No. 01-08306	U.S.D.C., C.D. Cal.
Friedman v. Microsoft Lucero v. Microsoft	No. CV2000-007222	Arizona Superior Court, Maricopa County
Microsoft I-V Cases	J.C.C.P. No. 4106	California Superior Court, San Francisco County
AO/Net Universal, Inc. v. Microsoft	No. CV 996383	California Superior Court, Marin County (consolidated under J.C.C.P. 4106)
Bliss v. Microsoft	No. GIC739082	California Superior Court, San Diego County (consolidated under J.C.C.P. 4106)
Bushin v. Microsoft	No. GIC739337	California Superior Court, San Diego County (consolidated under J.C.C.P. 4106)
Clement v. Microsoft	No. 309998	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Crain v. Microsoft	No. CV 99-1740	California Superior Court, Yolo County (consolidated under J.C.C.P. 4106)
Darby v. Microsoft	No. 308288	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Davis Instruments v. Microsoft	No. 308797	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Dunham v. Microsoft	No. 223291	California Superior Court, Sonoma County (consolidated under J.C.C.P. 4106)
Fisher v. Microsoft	No. 308120	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
GCA Strategies v. Microsoft	No. 309232	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Haynes v. Microsoft	No. 308976	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Kelley v. Microsoft	No. GIC740413	California Superior Court, San Diego County (consolidated under J.C.C.P. 4106)
Lang v. Microsoft	No. 309235	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Lara v. Microsoft	No. BC220860	California Superior Court, Los Angeles County (consolidated under J.C.C.P. 4106)
Lea & Tortola Restaurants v. Microsoft	No. 308067	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Lingo v. Microsoft	No. 301357	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Mission Gorge v. Microsoft	No. GIC739153	California Superior Court, San Diego County (consolidated under J.C.C.P. 4106)
Montgomery Partners v. Microsoft	No. 307970	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Paben v. Microsoft	No. 309676	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Piculell v. Microsoft	No. 308083	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Podell v. Microsoft	No. 308366	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Saams v. Microsoft	No. 308015	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Smith v. Microsoft	No. 309734	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)
Tazbaz v. Microsoft	No. GIC739158	California Superior Court, San Diego County (consolidated under J.C.C.P. 4106)
Williams v. Microsoft	No. 308390	California Superior Court, San Francisco County (consolidated under J.C.C.P. 4106)

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Wilson v. Microsoft	No. 817089	California Superior Court, Orange County (consolidated under J.C.C.P. 4106)
Wood v. Microsoft	No. GIC738730	California Superior Court, San Diego County (consolidated under J.C.C.P. 4106)
Pomerantz v. Microsoft	No. 01 CA 458	Colorado Court of Appeals (dismissal on appeal)
Vacco v. Microsoft	No. SC 16566	Connecticut Supreme Court (dismissal on appeal)
Bernard v. Microsoft	No. 00-561	District of Columbia Superior Court
Cummins v. Microsoft	No. 0003042-00	District of Columbia Superior Court
Hartman v. Microsoft	No. 99-27340	Florida 11th Judicial Circuit Court, Miami-Dade County
Hindman v. Microsoft	No. 00-1-0945	Hawaii Supreme Court (dismissal on appeal)
Branham v. Microsoft Berghausen v. Microsoft	No. 10C01-0001-CP12	Indiana Court of Appeals (dismissal on appeal)
Comes v. Microsoft	No. CL-82311	Iowa Supreme Court (dismissal on appeal)
In re Kansas Microsoft Corp. Antitrust Litig. (Bellinder, Foster & Mack v. Microsoft)	No. 99C17089	Kansas District Court, Johnson County

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Arnold v. Microsoft	No. 00-CI-00123	Kentucky Court of Appeals (dismissal on appeal)
Automatik Design v. Microsoft	No. 20 01-16976	Louisiana Civil District Court, Orleans Parish
Blomquist v. Microsoft	No. 99-752	Maine Superior Court, Cumberland County
Melnick v. Microsoft	No. 99-709	Maine Superior Court, Cumberland County
Davidson v. Microsoft	No. CAL00-7040	Maryland Circuit Court, Prince George's County (dismissal on appeal)
Alvarez v. Microsoft	No. 00-0882	Massachusetts Superior Court, Worcester County
Germano v. Microsoft	No. 00-10172-JLT	Massachusetts Superior Court, Middlesex County
O'Connell v. Microsoft	No. 00-1743	Massachusetts Superior Court, Middlesex County
A&M Supply Company v. Microsoft	No. 00-031123-NZ	Michigan Circuit Court, Wayne County
Fish v. Microsoft	No. 00-0059-CP	Michigan Circuit Court, Wayne County
Gordon v. Microsoft	No. 00-005994	Minnesota District Court, Hennepin County

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Guice v. Microsoft	No. 00:59	Mississippi Twenty-Second Circuit Court
Olson v. Microsoft	No. CDV-2000-219	Montana District Court, Lewis & Clark County
Arthur v. Microsoft	No. CI-01-126	Nebraska District Court, Dodge County
Minuteman, LLC v. Microsoft	No. 2001-010	New Hampshire Supreme Court (dismissal on appeal)
Geracitano v. Microsoft	No. L-0099-00	New Jersey Superior Court, Burlington County
In Re: New Mexico Indirect Purchasers (Lucero, Martin & Edwards v. Microsoft)	No. D0101-CV-20001697	New Mexico District Court, Rio Arriba County
Cox v. Microsoft	No. 00-1242	New York Supreme Court, New York County
Rankin III v. Microsoft	No. 00-4073	North Carolina Superior Court, Wake County
Salvatore v. Microsoft	No. 99-1246	North Carolina Superior Court, Lincoln County
Howe v. Microsoft	No. 00-328	North Dakota District Court, Grand Forks County
Johnson v. Microsoft	No. A 0001222	Ohio Court of Common Pleas, Hamilton County

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Major v. Microsoft	No. CJ-2000-01704	Oklahoma District Court, Tulsa County
Siena v. Microsoft	No. 2000-0472	Rhode Island Supreme Court (dismissal on appeal)
In Re: South Dakota Microsoft Antitrust Litigation (Gengler, Schoenfelder & Swanson v. Microsoft)	No. 00-235	South Dakota Circuit Court, Lawrence County
Baird v. Microsoft	No. 00-C175	Tennessee 20th Circuit Court, Davidson County
Sherwood v. Microsoft	No. 99C-3562	Tennessee 5th Circuit Court, Davidson County
Elkins v. Microsoft	No. 2001-431	Vermont Supreme Court (dismissal on appeal)
Gordon v. Microsoft	No. 00C-297	West Virginia Circuit Court, Ohio County
Capp v. Microsoft	No. 00-0637	Wisconsin Circuit Court, Dane County
Olstad v. Microsoft	No. 00-3042	Wisconsin Circuit Court, Milwaukee County

APPENDIX B

<i>Product Title/ Edition</i>	<i>Version</i>	<i>Platform</i>
Excel	2.00	Win16
Excel	2.10	Win16
Excel	1.00	OS/2
Excel	2.10	Win16
Excel	3.00	Win16
Excel	3.00	OS/2
Excel	4.00	Win16
Excel	5.00	Win16
Excel 95	7.00	Windows 9x
Excel 97	8.00	Win32
Excel	1.00	Alpha/Windows NT
Excel 2000	9.00	Win32
Office	1.00	Win16
Office	1.60	Win16
Office	2.50	Win16
Office	3.00	Win16
Office Standard	4.00	Win16
Office Professional	4.00	Win16
Office Standard	4.20	Win16
Office Professional	4.20	Win16
Office	4.20	WinNT
Office Professional	4.30	Win32
Office 95 Standard	7.00	Windows 9x
Office 95 Professional	7.00	Windows 9x
Office 97 Standard	8.00	Win32
Office 97 Professional	8.00	Win32
Office 97 Small Business	8.00	Win32
Office 97 Developer	8.00	Win32
Office 97 Service Release 1	8.00	Win32
Office 2000 Premium	9.00	Win32
Office 2000 Professional	9.00	Win32
Office 2000 Small Business	9.00	Win32
Office 2000 Standard	9.00	Win32
Office 2000 Developer	9.00	Win32
Office 2000 Service Release 1	9.00	Win32
Office XP Beta 1	10.00	Win32
Word	1.00	MS-DOS
Word	1.15	MS-DOS
Word	1.00	Unix
Word	2.00	MS-DOS
Word (Network)	3.00	MS-DOS

<i>Product Title/ Edition</i>	<i>Version</i>	<i>Platform</i>
Word	3.10	MS-DOS
Word	4.00	MS-DOS
Word	3.00	Xenix
Word (Network)	4.00	MS-DOS
Word	5.00	MS-DOS
Word	5.00	OS/2
Word	1.10	Win16
Word	1.10	OS/2
Word	5.50	MS-DOS
Word	2.00	Win16
Word	6.00	Win16
Word	6.0a	Win16
Word 95	7.00	Windows 9x
Word 97	8.00	Win32
Word 2000	9.00	Win32
Home Essentials 97		
Home Essentials 98		
Works Suite 99		
Works Suite 2000		

APPENDIX C

<i>Product Title/ Edition</i>	<i>Version</i>
Windows	1.00
Windows	2.00
Windows	2.10
Windows	3.00
Windows	3.10
Windows for Workgroups	3.10
Windows	3.11
Windows for Workgroups	3.11
Windows 95	4.00
Windows 95 Service Pack	4.00
Windows 95 OEM Service Release 2.0	4.00
Windows 95 OEM Service Release 2.1	4.00
Windows 98	4.10
Windows 98 Second Edition	4.10
Windows Millennium	
Windows NT	3.10
Windows NT Workstation	3.10
Windows NT Service Pack 1	3.10
Windows NT Service Pack 2	3.10
Windows NT Workstation	3.50
Windows NT Service Pack 2	3.50
Windows NT Workstation	3.51
Windows NT Service Pack 1	3.51
Windows NT Service Pack 2	3.51
Windows NT Service Pack 3	3.51
Windows NT Service Pack 4	3.51
Windows NT Workstation	4.00
Windows NT Service Pack 5	3.51
Windows NT Service Pack 1	4.00
Windows NT Service Pack 2	4.00
Windows NT Service Pack 3	4.00
Windows NT Service Pack 4	4.00
Windows NT Workstation Service Pack 4	4.00
Windows 2000 Professional	5.00
Windows 2000 Service Pack 1	
MS-DOS	1.0
MS-DOS	2.0
MS-DOS	2.0 (ROM Version)
MS-DOS	2.11
MS-DOS	3.1
MS-DOS	3.2
MS-DOS	3.21 (ROM Version)
MS-DOS	3.21 (foreign language versions of 3.2)

<i>Product Title/ Edition</i>	<i>Version</i>
MS-DOS	3.3
MS-DOS	4.0
MS-DOS	4.01
MS-DOS	5.0
MS-DOS	6.0
MS-DOS	6.2
MS-DOS	6.21
MS-DOS	6.22
MS-DOS	7.0
OS/2 with Presentation Manager	1.10
OS/2	1.20
OS/2 with Presentation Manager	1.21
OS/2	1.30

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

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MDL Docket No. 1332
Hon. J. Frederick Motz

This Document Relates To:
All Actions.

ORDER CONDITIONALLY CERTIFYING NATIONWIDE SETTLEMENT CLASS
AND GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT

WHEREAS, Counsel for the Nationwide Settlement Class (as defined in the Settlement Agreement dated November 19, 2001) have applied for an order conditionally certifying a class of plaintiffs for purposes of a nationwide settlement, and preliminarily approving the terms and conditions of the settlement as set forth in the Settlement Agreement together with the Appendices annexed thereto;

WHEREAS, the settlement requires, among other things, that All Claims (as defined in the Settlement Agreement) against Microsoft be settled and compromised;

WHEREAS, Microsoft has separately joined in this application; and,

WHEREAS, this Court having considered the Settlement Agreement and Appendices annexed thereto;

NOW, THEREFORE, pursuant to Rule 23 of the Federal Rules of Civil Procedure, it is hereby ORDERED that:

1. The terms defined in the Settlement Agreement are incorporated herein.

2. For purposes of this Order and the settlement contemplated by the Settlement Agreement, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court conditionally certifies a Nationwide Settlement Class, defined as follows:

All persons and entities of any kind who or which purchased and/or acquired a license in or for use in the United States (including its territories, possessions and commonwealths), other than for re-sale or re-licensing, for one or more Microsoft Operating Systems and/or Microsoft Applications, during the period January 1, 1985 through the date hereof, but excluding Microsoft, its officers, directors, successors, assigns and subsidiaries, and governmental entities.

However, if the settlement contemplated by the Settlement Agreement does not obtain Final Approval, then this certification shall be rendered null and void and the status of class certification shall be as it existed as of the date of the Settlement Agreement.

3. The Court appoints Counsel for the Nationwide Settlement Class as attorneys for the Nationwide Settlement Class.

4. The Court appoints _____, a competent firm experienced in the administration of large-scale class action notices, as the Settlement Notice Administrator. The Settlement Notice Administrator shall be responsible for receiving notices from members of the Nationwide Settlement Class pursuant to Paragraph 6 herein.

5. The Court preliminarily approves the settlement as set forth in the Settlement Agreement, subject to the right of any member of the Nationwide Settlement Class to challenge the fairness, reasonableness or adequacy of the Settlement Agreement and to show cause, if any exists, why a final judgment dismissing All Claims should not be ordered after due and adequate notice to the Nationwide Settlement Class as set forth in the Settlement Agreement and after a hearing on final approval.

6. Any member of the Nationwide Settlement Class can request exclusion from (“opt out” of) the settlement, as set forth in the Settlement Agreement, on or before 150 days from the entry date of this Order (“Opt-Out Date”). Each member of the Nationwide Settlement Class wishing to opt out of the Nationwide Settlement Class must individually sign and submit timely written notice to the designated P.O. Box obtained by the Settlement Notice Administrator. This written notice must clearly manifest an intent to be excluded from the Nationwide Settlement Class. To be effective, written notice must be postmarked on or before the Opt-Out Date.

7. As of the date hereof, all discovery and other proceedings in the actions before this Court are stayed until further order of the Court, except as may be necessary to implement the settlement or comply with the terms of the Settlement Agreement. In addition, all counsel of record in All Cases pending before the Court (as listed on pages A-1 through A-5 of Appendix A to the Settlement Agreement) are hereby barred and enjoined from prosecuting any of the cases listed on Appendix A to the Settlement Agreement, or commencing any actions relating to the subject matter of any of those cases.

8. All protective orders in force as of the date of this Order are hereby amended to apply to, cover, protect and treat all materials and information provided by Microsoft in connection with this settlement (including but not limited to information with respect to potential or actual members of the Nationwide Settlement Class) in the same manner as “Highly Confidential” discovery materials.

9. The Court hereby schedules a hearing to occur on _____, 2002, at ____ a.m. in Courtroom ____ at the United States Courthouse, 101 West Lombard Street, Baltimore, Maryland, to determine whether (a) the proposed settlement as set forth in the

Settlement Agreement, as well as certification of the Nationwide Settlement Class, should be finally approved as fair, reasonable and adequate for purposes of this settlement; (b) an Order of District Court Approval approving the Settlement Agreement and a final judgment should be entered; and (c) the application of Counsel for the Nationwide Settlement Class for an award of attorneys' fees and costs and expenses should be approved. No later than twenty-one days before the hearing, all relevant briefs and papers shall be filed and served by objectors or persons other than the parties. No later than seven days before the hearing, all relevant briefs and papers shall be filed and served by the parties.

10. Neither this Order, the Settlement Agreement, the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or settlement, is or may be used as an admission or evidence (a) of the validity of any claims, alleged wrongdoing or liability of Microsoft; (b) of any fault or omission of Microsoft in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal; or (c) that class certification would be or would have been appropriate in the absence of the Settlement Agreement.

ENTERED this ____ day of _____, 2001.

HONORABLE J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

[UNDER SEAL]

APPENDIX E

[INTENTIONALLY BLANK]

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

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MDL Docket No. 1332
Hon. J. Frederick Motz

This Document Relates To:
All Actions.

**ORDER CERTIFYING NATIONWIDE SETTLEMENT CLASS AND
GRANTING DISTRICT COURT APPROVAL OF THE SETTLEMENT**

WHEREAS, on _____, this Court entered an Order conditionally certifying a Nationwide Settlement Class and preliminarily approving the terms and conditions of this settlement (as reflected in the Settlement Agreement dated November 19, 2001, together with the Appendices annexed thereto);

WHEREAS, the settlement requires, among other things, that All Claims (as defined in the Settlement Agreement) against Microsoft be settled and compromised;

WHEREAS, this matter has come before the Court on a motion by Counsel for the Nationwide Settlement Class for final approval of the Settlement Agreement;

WHEREAS, Microsoft has separately joined in this motion; and,

WHEREAS, this Court, having considered all papers filed and proceedings held in connection with said motion, having held a hearing on _____, notice of the hearing having duly been given in accordance with this Court's Order dated _____, and finding no just reason for delay in entry of this Order Certifying Nationwide Settlement

Class and Granting District Court Approval of the Settlement (“Order of District Court Approval”), and good cause appearing;

NOW, THEREFORE, pursuant to Rule 23 of the Federal Rules of Civil Procedure, it is hereby ORDERED that:

1. The terms defined in the Settlement Agreement are incorporated herein.
2. This Court has jurisdiction over the subject matter of this proceeding and all parties in this proceeding, including all members of the Nationwide Settlement Class.
3. For purposes only of this Order of District Court Approval and the settlement contemplated by the Settlement Agreement, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court certifies a Nationwide Settlement Class, defined as follows:

All persons and entities of any kind who or which purchased and/or acquired a license in or for use in the United States (including its territories, possessions and commonwealths), other than for re-sale or re-licensing, for one or more Microsoft Operating Systems and/or Microsoft Applications, during the period January 1, 1985 through the date hereof, but excluding Microsoft, its officers, directors, successors, assigns and subsidiaries, and governmental entities.

4. This Court hereby approves the settlement set forth in the Settlement Agreement and finds that said settlement is, in all respects, fair, reasonable and adequate to the Nationwide Settlement Class under Rule 23 of the Federal Rules of Civil Procedure.
5. This Court hereby finds and concludes that the notice given to the members of the Nationwide Settlement Class was in compliance with this Court’s Order dated _____, and that said notice (including, but not limited to, the form of notice and methods of identifying and giving notice to the class) was the best notice practicable under the

circumstances and fully satisfies the requirements of due process, the Federal Rules of Civil Procedure, and any other applicable rules of the Court.

6. This Court hereby dismisses on the merits, with prejudice in favor of Microsoft and against all members of the Nationwide Settlement Class who did not validly request exclusion from the Nationwide Settlement Class, All Cases pending before the Court (as listed on pages A-1 through A-5 of Appendix A attached hereto).

7. A list of those members of the Nationwide Settlement Class who have filed valid requests for exclusion from the Nationwide Settlement Class is annexed hereto as Appendix B and made a part hereof. Any member of the Nationwide Settlement Class whose name does not appear on the list annexed hereto as Appendix B failed to file a valid opt-out request and is hereby barred from asserting otherwise.

8. Each and every member of the Nationwide Settlement Class (other than those listed on Appendix B), as well as those acting in concert with them, are hereby permanently barred and enjoined from instituting, maintaining, prosecuting or enforcing, either directly or indirectly, all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Nationwide Settlement Class ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission alleged in any of the cases listed on Appendix A hereto, arising from the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application and which arise under or relate to any federal, state or common law, including but not limited to law concerning or relating to (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*), (b) unfair competition, (c) unfair practices, (d)

consumer protection, (e) price discrimination, (f) unconscionable or unfair pricing, (g) trade regulation, (h) trade practices, (i) the Uniform Commercial Code, or (j) other law, regulation or common law similar or analogous to any of the above. This paragraph does not bar claims relating to conduct, acts or omissions that take place after the date of execution of the Settlement Agreement.

9. Upon Final Approval, Microsoft is expressly and irrevocably, fully and finally, released and forever discharged from All Claims.

10. Without affecting the finality of this judgment, the Court hereby reserves and retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation, and enforcement of the terms of the Settlement Agreement and the settlement embodied therein. If the Settlement Agreement is reversed or overturned on appeal, then this Order of District Court Approval and the Settlement Agreement shall have no force or effect, and all negotiations, proceedings and statements made in connection therewith shall be without prejudice to the right of any persons or entities, and the parties to the proceeding shall be restored to their respective positions existing as of the date of execution of the Settlement Agreement. The Nationwide Settlement Class and Microsoft shall remain subject to the Court's jurisdiction for purposes of enforcing the provisions of this Paragraph.

11. Upon consideration of the application for fees made by Counsel for the Nationwide Settlement Class, Counsel for the Nationwide Settlement Class are awarded fees of \$_____, to be paid by Microsoft jointly to Plaintiffs' Co-Chairs, who shall act as

agents on behalf of Counsel for the Nationwide Settlement Class for purposes of distributing and/or allocating such fees.

ENTERED this ____ day of _____, 2002.

HONORABLE J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

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MDL Docket No. 1332
Hon. J. Frederick Motz

This Document Relates To:
All Actions.

FINAL JUDGMENT

This Final Judgment is entered upon motion for approval of a settlement presented in this proceeding (“Settlement”) as stated in the Settlement Agreement dated November 19, 2001 (“Settlement Agreement”), and the appendices attached thereto, by Counsel for the Nationwide Settlement Class, after a hearing on notice.

1. For purposes of this Final Judgment, the following terms shall have the meanings set forth below.

“All Cases” means the cases listed on Appendix A hereto.

“All Claims” means all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Nationwide Settlement Class ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission alleged in any of the cases listed on Appendix A hereto, arising from the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application and which arise under or relate to any federal, state or common law, including but not limited to law concerning or relating to (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*), (b) unfair competition, (c) unfair practices, (d) consumer protection, (e) price discrimination, (f)

unconscionable or unfair pricing, (g) trade regulation, (h) trade practices, (i) the Uniform Commercial Code, or (j) other law, regulation or common law similar or analogous to any of the above. “All Claims” does not include claims relating to conduct, acts or omissions that take place after the date of execution of the Settlement Agreement.

“Counsel for the Nationwide Settlement Class” means Plaintiffs’ Lead Counsel Committee in the MDL Proceeding and Plaintiffs’ Executive Committee in the MDL Proceeding, as identified in paragraphs 12 and 14 of Pretrial Order No. 1 in the MDL Proceeding, dated June 26, 2000 (and as may be modified by the Court).

“Microsoft” means Microsoft Corporation, its successors, assigns and subsidiaries.

“Microsoft Applications” means all titles of software listed on Appendix B hereto.

“Microsoft Operating Systems” means all titles of software listed on Appendix C hereto.

“Nationwide Settlement Class” means all persons and entities of any kind who or which purchased and/or acquired a license in or for use in the United States (including its territories, possessions and commonwealths), other than for re-sale or re-licensing, for one or more Microsoft Operating Systems and/or Microsoft Applications, during the period January 1, 1985 through the date hereof, but excluding Microsoft, its officers, directors, successors, assigns and subsidiaries, and governmental entities.

The “United States” means the fifty States, the District of Columbia, Guam and all territories, possessions, and commonwealths of the United States of America.

2. All Cases listed on pages A-1 through A-5 of Appendix A hereto are dismissed with prejudice and on the merits in favor of Microsoft.

3. All counsel of record in All Cases pending before the Court (as listed on pages A-1 through A-5 of Appendix A hereto) are permanently barred and enjoined from

commencing or continuing any litigation, arbitration or other proceeding against Microsoft relating to All Claims, including not limited to those claims pending in All Cases.

4. Each party to the settlement shall bear its own costs and the fees and expenses of its counsel, except as directed in this Court's Order of _____.

5. The terms of the Settlement Agreement are not merged into this Final Judgment and remain binding upon the parties thereto, who are directed to implement its provisions.

ENTERED this ____ day of _____, 2002.

HONORABLE J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE